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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/363,234 07/27/99 DTT

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EXAMINER

D ANDREW FLOAM ESQ
NEEDLE & ROSENBERG PC
THE CHANDLER BLDG SUITE 1200
127 PEACHTREE STREET NE
ATLANTA GA 30303-1811

THOMPSON M

ART UNIT

PAPER NUMBER

3763

DATE MAILED:

02/14/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/363,234	OTT ET AL.	
	Examiner	Art Unit	
	Michael M. Thompson	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
 - 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) Claim(s) 7, 9, 12, 15, 16, 19 and 20 is/are allowed.
- 6) Claim(s) 1-6, 8, 10, 11, 13, 14, 17, 18 and 21-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,6.
- 18) Interview Summary (PTO-413) Paper No(s) _____.
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-24, drawn to an apparatus for treating a gas with an agent, classified in class 604, subclass 83.
 - II. Claims 25-33, drawn to a method for treating a gas for delivery to an animal, classified in class 604, subclass 500.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II. and I. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as humidifying the air in a forced air, home heating system.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Andrew Floam on 02-09-2001 a provisional election was made with traverse to prosecute the invention of I., claims 1-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

1. The disclosure is objected to because of the following informalities: On page 3, line 27 the applicant states, "As used in the claims, 'A' can mean one or more." The use of "A" denotes singularity. It is understood that the applicant is his or her own lexicographer when defining the metes and bounds of the claimed invention. However, while a term used in the claims may be given special meaning in the description of the invention, generally no term may be given a meaning repugnant to the usual meaning of the term. *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Ott et al. (US Patent No. 5,411,474). Ott et al. teaches an apparatus for treating a gas with at least one

agent comprising a housing defining one chamber having an entry port and an exit port, the chamber receiving a quantity of an agent, a pressurizer/humidifier, a container/reservoir pre-filled with a quantity of agent, which comprises an opening, and a port for filling the container/reservoir, at least one layer of absorbent material/membrane in the chamber.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8, 10, 11, 13, 14, and 21-~~23~~⁷ are rejected under 35 U.S.C. 103(a) as being unpatentable over Ott et al in view of Nishino et al. Ott et al. teaches all of the limitations of the claims except for a humidity sensing and monitoring means where the humidity sensing means is a humidity sensitive capacitor. Nishino et al teaches a humidity-sensing element of electric capacitance type, which element is high in accuracy and sensitivity and quick in response. It would have been obvious to one of ordinary skill in the art, at the time of invention, to combine the humidity sensing device of Nishino et al with the apparatus of Ott et al. to merely add another sensing device specifically to sense the level of humidity of the gas. Please note that Ott et al teaches several other sensing devices for pressure, temperature and volumetric flow. Also note that is the Examiner's position that devices having additional external reservoir/bag members is well within one of ordinary skill in the art.

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10. Claims 1-6, 17, 18, and 21-24 are rejected under 35 U.S.C. 102(b) and 103(a) as being anticipated by Ott et al. and as being unpatentable over Ott et al. and Nishino et al as applied to claims 21-23 above, and further in view of Absten. Ott et al and Nishino et al teach all of the limitations of claims 1-6, 17, 18, and 21-23 except for a humidity sensing means is disposed in the chamber downstream from the heating means. While Applicant has failed to indicate what structures are responsible of monitoring the critical threshold of the gas, Absten teaches a microcontroller that will "typically" be used to monitor the pressure of the gas, thereby rendering it capable of monitoring humidity levels of gas. It would have been obvious to one of ordinary skill in the art, at the time of invention, to combine the modified apparatus of Ott et al with the microprocessor of Absten to monitor the level of humidity of the gas for the purpose of indicating when the gas drops below a preset, critical relative humidity threshold.

Allowable Subject Matter

11. Claims 7, 9, 12, 15, 16, 19, and 20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1-6, 17, 18, and 21-²⁴~~23~~ are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5,411,474. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is the Examiner's position that these claims are substantially similar in teaching an apparatus for treating a gas with at least one agent comprising a housing defining one chamber having an entry port and an exit port, the chamber receiving a quantity of an agent, a pressurizer/humidifier, a container/reservoir pre-filled with a quantity of agent, which comprises an opening, and a port for filling the container/reservoir, at least one layer of absorbent material/membrane in the chamber.

14. Claims 1-6, 17, 18, and 21-²⁴~~23~~ are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 6,068,609. Although the conflicting claims are not identical, they are not patentably distinct from each other because the both teach an apparatus for treating a gas with at least one agent comprising a housing defining one chamber having an entry port and an exit port, the chamber receiving a quantity of an agent, a pressurizer/humidifier, a container/reservoir pre-filled with a quantity of agent, which comprises an opening, and a port for filling the container/reservoir, at least one layer of absorbent material/membrane in the chamber.

Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

Any questions pertaining to informal matters such as the status of a case, missing portions of an Office Action, references, filing, paper matching, etc., should be directed to the Examiner's Legal Instruments Examiner (LIE), Rosalind Smith, at (703) 305-2440.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, AnhTuan Nguyen, can be reached on (703) 308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4520.

Michael M. Thompson

Patent Examiner

**ANHTUAN T. NGUYEN
PRIMARY EXAMINER**

2/12/01

MT *UM*

February 10, 2001